

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GLENDALE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011010467

ORDER DENYING MOTION TO  
DISMISS

On January 18, 2011, Student filed a Request for Due Process Hearing (complaint) naming District as the Respondent. Student contends that District denied Student a FAPE during the two year statute of limitations period on various grounds including child find. Student alleges as part of the background facts that at March 17 and 31, 2008 IEP team meetings, District failed to appropriately assess Student in all areas of suspected disabilities, conducted a pre-determined IEP meeting by denying Student eligibility, prevented parent from fully participating in the IEP meetings, and failed to consider Student's private assessment. Student seeks a determination of eligibility under the category of "Other Health Impairment," compensatory education, reimbursement for private school placement from January 2009 to the present, and prospective placement at a non-public school.

On January 25, 2011, District filed a Motion to Dismiss alleging that Student raised claims beyond the two year statute of limitations, and that Student did not plead an exception to the statute.

On January 27, 2011, Student filed an opposition and conceded its claims were limited to the two year statute of limitations period beginning January 18, 2009. Student clarified that he is alleging that District had a continuing child find duty while Student was in a private placement during the statute of limitations period.

On January 31, District filed a reply, alleging that under the GLASS SELPA agreement, the district of the location of the private school is responsible for child find referrals. It alleges that Student is not a resident of the district but a resident of the district of location, where his private school is. District asks to be dismissed. As discussed below, District's motion is denied.

APPLICABLE LAW

The statute of limitations in California and federal law is two years from the date the parties learned of the alleged action. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education

Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.) Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc., special education law does not include a summary judgment procedure. Accordingly, OAH generally will not dismiss claims that have otherwise been properly pleaded.

## DISCUSSION

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, there is no summary judgment procedure in special education law. Here, the District's defense that it is not Student's local education agency for purposes of providing FAPE was first raised in its reply, not its motion. Moreover, even if considered, District's ground for dismissal seeks a ruling on the merits that would require factual findings that should be made after a hearing. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: February 14, 2011

/s/

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DEBORAH MYERS-CREGAR  
Administrative Law Judge  
Office of Administrative Hearings